



STATE OF MAINE  
DEPARTMENT OF EDUCATION  
23 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0023

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July 31, 2006

Henry L. Johnson  
Assistant Secretary for Elementary and Secondary Education  
United States Department of Education  
400 Maryland Avenue  
Washington, D.C. 20202-6132

Dear Assistant Secretary Johnson:

Your letter of June 29, 2006, indicates that Maine's standards and assessment system is Non-Approved and that the State will not be able to administer a fully-approved assessment in the 2006-07 school year. Based on those conclusions, your letter proposes to withhold 25 percent of the State's FY 2006 administrative funds under Part A of Title I of the Elementary and Secondary Education Act (ESEA) and indicates that Maine needs to enter into a compliance agreement under Section 457 of the General Education Provisions Act.

This letter is to show cause why a withholding of funds is unwarranted and to request that Maine's system be redesignated as "Approval Pending" (at a minimum). These related requests for reconsideration are based on both Maine's good faith effort to meet No Child Left Behind Act (NCLB) requirements while raising the bar for high school expectations and on the fact that Maine, in its June 16 submittal, addressed many of the issues identified in your June 29 letter; nevertheless, we are presenting additional evidence with this letter. This letter is also to advise you that we expect to have a fully approvable system for school year 2006-07. We describe below a detailed plan to affect that goal and provide additional information. Accordingly, there is no need for a compliance agreement.

Since we understand in conversations with your staff that the proposed withholding of funds is premised wholly or primarily on Maine's use of the SAT as its high school level assessment for AYP, we are providing information on Maine's vision and leadership in high school redesign. Use of the SAT is an integral part of that effort. Maine has taken a bold and highly visible step to move our State in line with the vision of preparing all students to be ready for college, work and citizenship in the 21<sup>st</sup> century. We have been publicly recognized for our high standards and we are pursuing an aggressive agenda to achieve the vision that is consistent with the vision advocated by the President, through the Secretary of Education and the U.S. Department of Education (USDE). Maine has been recognized by the National Governors' Association and the Gates Foundation, having been twice awarded Honor States grants to pursue this work.

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Our leadership in this area and our use of the SAT are in line with the President's and Secretary Spellings' policies to raise the bar for high school students. Secretary Spellings' report, *The Secretary's High School Initiative-High Expectations* states: "Too many students graduate high school with low skill and achievement levels. They may have passed their courses, but the courses were so unchallenging their degree is nearly meaningless and does not prepare them for a career or postsecondary education. We must find ways to challenge all students at high levels, and hold students, teachers and administrators accountable for achievement."<sup>1</sup>

Similarly, the White House report: *Educating America: The President's Initiatives for High School, Higher Education and Job Training* states: "President Bush is helping to expand opportunities for American students and workers. His proposals will help more Americans graduate from high school prepared for college or the workforce, access postsecondary education, and get the job training and skills to compete in a changing and dynamic economy and fill jobs in emerging industries."

"The President has set a new national goal: to ensure that every high school student graduates and is ready for the workplace or college."<sup>2</sup>

The findings are consistent, the research is clear and the vision is well defined: **all** students need and deserve a high quality, academically rigorous high school learning experience that prepares them well for post-secondary schooling and/or high-performance jobs. The Maine Department of Education fully concurs with these findings, embraces this vision and is committed to move forward with our agenda. A key decision, to use the SAT as Maine's measure of secondary school standards, was made after careful deliberation and considerable consultation. Figuring prominently among the points of consideration were these supporting statements, reports and initiatives issued from the USDE and the White House, as well as from respected research institutions.

To say the very least, a withholding of funds based on our decision to use the SAT is both unwarranted and contrary to the best interest of USDE, the Maine Department of Education and

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<sup>1</sup> The Secretary's report continues, "High schools must let go of long-held myths and perceptions about who can learn and who cannot so that all youth can reach high academic standards. Unfortunately, some of the biggest skeptics are those whose job it is to believe in students; secondary educators who believe that certain social groups or students are slower to learn and react by lowering the bar for performance, robbing those groups of opportunities to grow intellectually and achieve their dreams. Yet the fact that there are thousands of teachers who are producing promising results offers hope that not only can high schools raise expectations, but that they also can help all students meet them. The urgency is for the majority of schools to learn from their example."  
<http://www.ed.gov/about/offices/list/ovae/pi/hsinit/highspec.html>

<sup>2</sup> The White House report continues, "Through No Child Left Behind, President Bush has already made the commitment to make a real difference in America's schools. While No Child Left Behind will prepare a new generation of students with the knowledge they need to succeed, more can be done to improve our Nation's high schools to meet the needs of the 21st Century workforce. President Bush has proposed initiatives to ensure that every student graduates from high school prepared to enter college or the workforce with the skills needed to succeed....." <http://www.whitehouse.gov/infocus/education/20040513-educating-america.html>

particularly our students. By using the SAT, we can project what students need to know and be able to do, incentivize preparation for college, and align high school standards and curriculum with college and work expectations. This year's implementation of the SAT has established a precedent in the State that all students can and are expected to participate in a recognized gateway assessment that enables them to attend post-secondary institutions across the nation. We know that our use of the SAT needs further refinement to fully achieve our goals, and we are committed to completing that work this year. This, however, should put us at no worse than an "Approval Pending" status with no withholding of funds.

We hereby request a meeting with you and your staff to discuss the issues and evidence addressed in the letter. We believe such a meeting is needed because your June 29 letter was issued without reviewing evidence we had already submitted and to ensure that there is a full understanding of our good faith and progress, as well as the policy implications of the proposed withholding of funds.

In sum, while we acknowledge that further steps and evidence are needed, as explained further below, the U.S. Department of Education's (USED's) proposed withholding of funds is flatly inappropriate for several reasons:

- First, we have acted in good faith in developing our standards and assessment system and in cooperating with the peer review process. On February 7, 2002, the State of Maine received full approval for its assessment system under the Improving America's Schools Act of 1994 (IASA). The State was one of only seventeen in the country to receive full approval under the 1994 reauthorization of the ESEA. Since that time, the State has made numerous modifications to strengthen its overall assessment system to ensure compliance with federal regulations, including adoption of the SAT as its grade 11 test, with the first administration in the Spring of 2006.

Given Maine's good faith in developing and implementing our system, the proposed withholding would represent an inappropriate penalty. Moreover, particularly given the limited resources available to the Maine Department of Education, the withholding would have a serious negative impact on statewide educational function, and our efforts to raise the bar and ensure that all students graduate from high school ready for college and work.<sup>3</sup>

- Second, your determination does not take into account evidence that we timely submitted and therefore reflects a judgment based on incomplete information. In February 2006, Maine submitted evidence describing its system of standards and assessments to the USDE for peer review. In April 2006, the USDE presented to Maine the results of the

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<sup>3</sup> The twenty five percent reduction of Title IA administrative funds would have a significant impact on Maine's ability to provide needed technical assistance to LEAs. Maine's change from a combination of onsite and desk audits of LEA IASA programs to cyclic, focused onsite NCLB Monitor Visits has enabled the Maine Department of Education staff to become more acutely aware of LEA technical assistance needs. The proposed withholding of Title IA administrative funds would seriously impair our capacity to provide the assistance needed by seriously under-performing LEAs. These districts need focused regional workshops, timely responses to identified concerns, and in some cases, ongoing intervention to turn them around. The proposed withholding would seriously hamper our ability to work directly with these districts in order to move them forward in meeting compliance, in developing purposeful quality control, and in capacity building.

peer review of the Maine standards and assessment system and detailed the additional evidence necessary for Maine to be in compliance with the federal requirements of ESEA.

In particular, on June 16, 2006, Maine submitted Part 1 of a two- part submission of additional evidence to be considered by the peer reviewers and advised you that the balance of the evidence would be provided in a subsequent submission as Part 2. This evidence was in response to the Peer Review Report of April, 2006. USDE acknowledged the receipt of Maine's Part 1 submission, characterized it as well-organized and indicated that a peer review would be set up as quickly as possible. This evidence submission documented Maine's response to many of the concerns that are the basis of your June 29 decision about Maine's status. We understand from our conversation with you on July 19, 2006, that the Peer Review team did not review this evidence prior to your determination of Maine's status.

Maine has continued to work vigorously in the past thirty days to ensure that any outstanding issues are addressed and resolved through the development and presentation of evidence, impact data or a plan for full compliance by June 30, 2007, and has included new information on how the State meets the "Approval Pending" designation (at a minimum). We submit that the point-by-point listing of current and additional evidence below, which clearly supports a change in our designation and a withdrawal of the proposed withholding of funds action.

As the following evidence and steps show, Maine has one remaining fundamental issue to resolve by the end of the 2006-07 school year: the addition of items to the SAT to assure full alignment of our high school assessment with State's mathematics standards and to do so in a manner that is consistent with standards for technical quality. The other items cited in the attachment to your letter either are fully resolved, as explained below, or involve provision of follow-up documentation and evidence – some of which was previously supplied to USDE for peer review but was not reviewed – or routine follow-up steps to the administration of new assessments.

- Third, as noted above, it is clear that the proposed withholding is premised wholly or primarily on Maine's use of the SAT as its high school level assessment. Adoption of the SAT has presented significant transitional implementation challenges, including ensuring supplementary items to assure full alignment with state standards. With due respect, we believe it makes no sense under the law or as a policy matter to penalize Maine for this effort to raise standards and the resulting transitional challenges that it has been working to resolve. Those transitional challenges do not justify penalizing Maine through a withholding of funds, nor do they justify a "Non-Approval" designation for our State.

We address the specific USDE findings as follows:

#### **4.0 Technical Quality**

##### **4.1 Documentation that any modified SAT for high school fully conforms to NCLB requirements.**

By adopting the SAT as our high school measure, we have publicly transitioned from a paper philosophy of “all students are valued” to a tangible, highly visible action statement of belief in all students. For twenty years, we have been tinkering at the margins of high school reform but quite candidly we have not been able to make a major impact on high school systems and structures that have been carried forward from decades ago when high schools worked only for some students. By requiring all Maine students to sit for the SAT, we send a clear message that will demand changes to curricular and instructional structures that have proven to be change-resistant by other means. We have incorporated the SAT program as a featured component of our high school systemic assessment redesign and, as of next year, all 10<sup>th</sup> grade Maine students will be required to participate in the PSAT testing program at State expense.

The SAT Reasoning Test was redesigned in the Spring of 2005 to more closely reflect and assess what is being taught in high school and those skills and abilities most necessary for college success within the context of a reasoning assessment. It is an acknowledged international benchmark of academic preparedness and a highly recognized and accepted college admissions test. Students who have a set of SAT scores have earned academic currency. It is for these reasons that I chose to adopt the SAT over other possible assessment options for our high school students.

To the extent that the SAT needs to be augmented, Maine will work with the College Board and Measured Progress (MP) to achieve the necessary requirements. We know that other states have successfully augmented tests like the SAT. Evidence provided herein describes how scores could be provided for an assessment that consisted of items from the SAT and items that were produced to augment the SAT. After a careful review of the standards, the number and types of items needed to augment the SAT will be determined. The College Board and Measured Progress will work together to develop the items, and SAT item-level data will be sent to Measured Progress. MP will score the augmented items and combine item-level data from the augmented items with item-level data from the SAT to produce an Maine Educational Assessment (MEA) score on a new scale that will be used for AYP. Standard setting would occur with the new MEA scores.

Maine has completed its first alignment cycle to examine the alignment characteristics of the SAT to the MLR. Internal staff, Technical Advisory Committee (TAC) members, external consultants and a nationally recognized alignment expert have concluded that reading items on the SAT are aligned with the MLR, but that augmentation of the mathematics test (SAT) would strengthen the inferences about student math proficiency. The State will conduct a technical analysis to understand the implications associated with each task required to become fully operational in the Spring of 2007. As outlined in the below evidence, Maine will evaluate and document the technical quality to ensure the assessment meets all federal guidelines. See evidence:

4.1.1-Augmentation Overview-College Board-June 2006

4.1.2 -QAP 3.5-Technical Quality Procedures-Augmentation-July 2006

4.1.3-QAP Appendix A-July 2006

**4.2 Documentation that the use of accommodations, for both students with disabilities and English language learners, and/or alternate assessments yields scores from which valid inferences may be drawn.**

Maine has substantial evidence that documents utilization of accommodations yields scores to which valid inferences may be drawn.

The State has made available numerous and appropriate accommodations to maximize participation in the regular assessment for students with disabilities and those learning English. Administrative manuals and guidelines provide clear, standardized procedures to ensure the established set of accommodations allows students to participate in the *MEA, PAAP and SAT* without changing the underlying academic construct. The Department has begun extensive evaluations of those accommodations used by Students with Disabilities (SWD) and Limited English Proficient (LEP) students. Further, quality assurance mechanisms are being designed to detect data anomalies using the guidelines outlined in the recent CCSSO publication: *Validity Threats: Detection and Control Practices for State and Local Education Officials* (Taylor, Beaudoin, Auty and Goldschmidt, 2006). Maine, a contributing state to this publication, has moved towards the national forefront in its actions and commitments to improve the validity characteristics of its standards, assessment and accountability system. The evidence listed below shows the progression of activities since the February 2006 Peer Review:

- 4.2.1-LEP Population-2005
- 4.2.2-Revised MEA Accommodations-Draft-2006
- 4.2.3-QAP 5.2-Accommodations-2006
- 4.2.4-QAP 5.2-Design and Data-2006
- 4.2.5-SpEd Outlier Screening-2005
- 4.2.6-SAT Accommodations

#### **4.3 Evidence of technical quality of the PAAP, including reliabilities for student subpopulations, generalizability studies, inter-rater consistency in scoring of constructed response items and conditional standard errors of measurement for each cut score.**

Maine has substantial evidence regarding the technical quality of the PAAP on such issues as inter-rater reliability which meets NCLB requirements, and Maine is in the process of continually improving its basis of evidence.

The PAAP inter-rater statistics demonstrate that the scoring procedures used to score each portfolio are applied in a standardized and consistent manner. Inter-rater reliability statistics for 2005-2006 have been calculated and are submitted here at 4.3.2. The percentages of inter-rater agreement overall for our Portfolios were:

- |               |     |
|---------------|-----|
| o Mathematics | 88% |
| o Reading     | 87% |
| o Science     | 90% |

These inter-rater reliability statistics are clearly within industry standards for on-demand assessments. We expect these percentages to be higher during the 2006-2007 year when only State-provided Tasks may be included in the Portfolios. That timeline indicates that Maine will be in compliance for the 2006-2007 school year.

Students in grades 3, 5, 6 and 7 participated in the spring of 2006 in a tryout of Tasks to be used in 2006-2007. All students appropriate for the PAAP in grades 3-8, and 11 will be required to

submit Portfolios in 2006-2007. The blueprint for assessment by grade has been submitted to USDE.

The alternate assessment is applied to a subpopulation of students with disabilities. The State examines the PAAP participant's disability as a quality assurance technique, to ensure only eligible (by policy) students participate in this form of assessment. We are aware that generalizability studies and calculating conditional errors have neither the literature base to guide such procedures nor have they been required for any approved state, including Delaware, North Carolina, Tennessee and South Carolina. Maine has met the technical requirements for the alternate assessment required by federal regulations. See evidence:

- 4.3.1-PAAP-Summary of 2005-2006 Tasks
- 4.3.2-PAAP-Inter-rater Reliability-2006
- 4.3.3-PAAP-MEA Disability Comparison-2005
- 4.3.4-PAAP-Contract Agreement-Rider A
- 4.3.5-PAAP-Disaggregated Results-2006
- 4.3.6-PAAP-Standards Validation-2003

## **5.0 Alignment**

### **5.1 A comprehensive, impartial alignment study of the School Year (SY) 05-06 assessment items with the new Grade Level Expectations (GLEs) for grades 3-8 for the MEA in reading and mathematics.**

Maine and its vendor use internal quality assurance practices to ensure alignment between the academic standards and the MEA.

Internal item development and review processes determine if items match the grade-level expectations, while representing cognitive complexity at developmentally appropriate levels. Information from field tested items are provided to content development committees of teachers, supervisors, content specialists and members of academia as they develop test items for each operational form and examine item statistics from the previous year's test. This alignment function occurs prior to each administration of the operational test.

While there is a requirement to measure the depth and breadth of the academic content standards, we believe that our process incorporates significant evidence of alignment. We do not believe that an additional external alignment study is expressly required by law. However, we think such a study is helpful. We are in the process of entering an agreement for services with Stanley Rabinowitz at WestEd to conduct an alignment study of the 3-8 Maine Educational Assessment (including alternate assessment) items and the grade level expectations. The alignment study, a Webb based model, will begin with a review of Maine's historical use of the Maine Educational Assessment and Maine *Learning Results* standards and grade level expectations in reading and mathematics. The intent of the assessment, the test blueprint and the decision rules will be examined for understanding, and terms used in the standards and the test will be clarified. Existing test forms, the entire item pool, and field test items will be examined. Alignment study results will be provided as well as recommendations for improvements to the test blueprint and future forms of the test. We expect this work to be completed in November 2006, and any issues to be fully addressed this coming school year. See evidence:

- 5.1.1-QAP 2.5 MEA Alignment-2006
- 5.1.2-Item Alignment and Review Process

## **5.2 A work plan and timeline for an impartial study of alignment between the SAT and the Maine *Learning Results* (MLR) for grade 11.**

USDE requires that Maine demonstrate that the SAT aligns with and assesses Maine's *Learning Results* in reading and mathematics. The study has already been completed and is submitted as evidence herein.

Maine engaged Dr. Norman Webb at the University of Wisconsin to conduct alignment studies between the Maine *Learning Results* (MLR) and the SAT Reasoning Test. However, these initial alignment studies were conducted using the entire set of the *Learning Results* for English language arts and mathematics standards and performance indicators. As a result, the studies demonstrated alignment gaps because Maine, unlike other states: (1) did not distinguish between those MLR standards and performance indicators that could be measured by a large scale assessment and those that could not; (2) did not define what is expected of students by grade 11 in the 9-12 standards grade span; and (3) did not limit English language arts to the reading standards. In retrospect, we should have advised Dr. Webb of these distinctions. Nonetheless, in his April 2006 report "Alignment Analysis of Secondary Language Arts Standards and the SAT Reasoning Test," it was found that for reading (standards cluster A, B and D) the Maine *Learning Results* and the SAT Reasoning Test in Critical Reading were found to be aligned with only slight improvement needed for full alignment.

The December 2005 report "Alignment Analysis of Secondary Mathematics Standards and the SAT Reasoning Test" [finalized in April 2006] found, however, that to achieve full alignment would require the addition of up to 40 items, the number of which could be reduced if the items were robust enough to measure content related to more than one performance indicator and standard.

Subsequently, Dr. Webb conducted an additional analysis in mathematics using the Maine cluster organization framework for Maine's *Learning Results*. This format has been used for the MEA since 2001 and is used as the basis for reporting. The results of this analysis showed a stronger alignment in the dimensions of Webb's model resulting in a reduction of the number of items needed for augmentation. As a result, the State has clear evidence that the alignment characteristics of the SAT and Maine's Reading meets the technical and statutory requirements of "depth and breadth." However, the empirical evidence suggests the alignment "breadth" between the SAT and Maine's Mathematics standards will require augmentation of additional items. The USDE letter required a "work plan and timeline for a comprehensive impartial alignment study...", which has been completed as of this date. The body of evidence presented below clearly shows how the State has met the requirements outlined by the USDE and made the decision to augment the mathematics portion of the SAT. See evidence:

- 5.2.1-Reading Alignment Results-2006
- 5.2.2-Mathematics Alignment Results-2006
- 5.2.3-Mathematics Alignment Cluster-2006
- 5.2.4-SAT-Math-Specifications-2006
- 5.2.5-SAT Alignment Plan-2006



### **5.3 A comprehensive impartial alignment study for the MLR content standards and the alternate achievement standards for PAAP**

In regard to Maine's Alternate Assessment, the evidence submitted on June 16, 2006, in combination with that included in this submission should eliminate all of the issues related to alternate assessment that have been cited.

We believe Maine's Personalized Alternate Assessment Portfolio (PAAP) will be in full compliance during the 2006-2007 school year. Evidence of clear alignment between Maine's *Learning Results* and the alternate assessment (Personalized Alternate Assessment Portfolio) was submitted to USDE on June 16, 2006.

The foundation of the PAAP is a set of Rubrics designed to align to the State's Grade Level Expectations for Grades 3-8 and Maine's *Learning Results* for grade 11. Those Rubrics guide instruction and the production of assessment evidence submitted in the PAAP. The Grade Level Expectations are used as the basis for Maine's Educational assessment for grades 3-8 and the *Learning Results* at Grade 11 for the SAT. While the Rubrics are backed down at the lower levels to allow access to the assessment for as many students as possible, the panels that developed them began with the performance indicators for all Maine students. As they identified expectations for significantly disabled students, they consistently referred to the original descriptors to maintain links to them. The links are so close, that, as students taking an alternate assessment move up the developmental continuum of achievement, they reach a point where the alternate expectations and those for all students at a given level are exactly the same.

Attached you will find a sample Mathematics Rubric. The shaded sections contain language identical to that of grade level expectations for all students. The language of Rubric Level 2, Level of Complexity 3 (the first of the shaded descriptors), for example, is identical to that of the Grade 3 Expectation for all students. Additional side-by-side tables are included to compare the language of each Content Standard and Performance Indicator measured in the Maine Educational Assessment for all students and the Content Standards and Performance Indicators beginning with Rubric Level 2, Level of Complexity 3 for the PAAP. Achievement standards for the PAAP will be set next spring and will be the basis for the reporting of scores in 2006-2007.

- 5.3.1-PAAP Alignment Crosswalk-Reading
- 5.3.2-PAAP Alignment Crosswalk-Math
- 5.3.3-QAP 4.4-PAAP Alignment Plan-2006
- 5.3.4-PAAP Task Development and Review Process
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### **6.0 - Inclusion**

- 1. Documentation that the local translation of assessments for LEP students does not invalidate their scores (See 4.0).**

Maine provides several accommodations to ensure all students, including those learning to

speak English can participate in the statewide assessment system. One accommodation authorizes local districts to hire translators. In 2005, this accommodation was used for approximately 5 out of 10,000 test-takers, thus classifying it as a “low incident” accommodation. Evaluative data and random monitoring do not support the hypothesis that this accommodation has invalidated any MEA scores administered under these standardized conditions. Maine’s Quality Assurance Plan will implement additional control procedures (see 4.2.3) to further strengthen the use of all accommodations used by any student within the State.

- 6.1.1-Accommodation E6-Translation-Draft
- 6.1.2-Monitoring Translation Accommodation-2006
- 6.1.3-Examining Translation Use-2006

## **Conclusion**

Based on the evidence contained and referenced in this letter, we respectfully submit that Maine is in substantial compliance with the standards and assessment requirements of the No Child Left Behind Act. Maine has acted in good faith to implement these requirements. To the extent that additional steps and evidence are needed over the coming months, we are prepared to complete them. They do not warrant withholding of administrative funds from the State. Again, we request a meeting with you and your staff to discuss this matter before any decision is made. Our interest in submitting this letter is to obtain a fair-minded judgment on the merits of our system, and we accordingly have focused on a positive presentation of our evidence to show our substantial compliance with the law. At the same time, we reserve our right to raise legal objections to USDE's use of the withholding authority in Section 1111 of the ESEA to support the actions taken against Maine by the Secretary. We hope and trust that there will be no need to reach those issues.

Finally, I am deeply concerned that Maine’s current designation of “Non-Approval” sends a contradictory message- not only to our State but to the rest of the nation as well - that undermines our particular efforts to achieve significant and meaningful reform, ensure academic rigor and college readiness for all students, and measure our students against an international benchmark, signals that a state that honestly strives for that goal will be challenged in its efforts to do so. Properly understood and implemented, NCLB should and can be a lever for states and districts to help improve standards-based reform and raise student achievement. Based on our discussions, I believe that you share this goal. Nowhere could that opportunity be more clear and important than here, as Maine seeks to raise the bar on standards, assessments and the alignment of high school with college and work. I respectfully and strongly request your reconsideration to ensure that NCLB incentivizes rather than undercuts these important efforts.

I remain committed to work positively and productively with the USDE as a partner that supports our actions as well as our vision and mission and hope that you can stand with us to work together to achieve the educational goals that can transform America.

Sincerely,



Susan A. Gendron  
Commissioner of Education